

SECOND DIVISION

[G.R. No. 179408, March 05, 2014]

**PHILIPPINE LONG DISTANCE TELEPHONE COMPANY,
PETITIONER, VS. ABIGAIL R. RAZON ALVAREZ AND VERNON R.
RAZON, RESPONDENTS.**

DECISION

BRION, J.:

Before the Court is a petition for review on *certiorari*^[1] assailing the decision^[2] dated August 11, 2006 and the resolution^[3] dated August 22, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 89213 on the validity of the four search warrants issued by the Regional Trial Court (RTC) of Pasay City, Branch 115.

The CA rulings (i) quashed the first two search warrants, similarly docketed as Search Warrant No. 03-063, issued for violation of Article 308, in relation to Article 309, of the Revised Penal Code (RPC), and (ii) declared void paragraphs 7, 8 and 9 of the other two search warrants, also similarly docketed as Search Warrant No. 03-064, issued for violation of Presidential Decree (PD) No. 401.^[4]

FACTUAL ANTECEDENTS

Philippine Long Distance Telephone Company (PLDT) is the grantee of a legislative franchise^[5] which authorizes it to carry on the business of providing basic and enhanced telecommunications services in and between areas in the Philippines and between the Philippines and other countries and territories,^[6] and, accordingly, to establish, operate, manage, lease, maintain and purchase telecommunications system for both domestic and international calls.^[7] Pursuant to its franchise, PLDT offers to the public wide range of services duly authorized by the National Telecommunications Commission (NTC).

PLDT's network is principally composed of the Public Switch Telephone Network, telephone handsets and/or telecommunications equipment used by its subscribers, the wires and cables linking these handsets and/or equipment, antennae, transmission facilities, the international gateway facility (IGF) and other telecommunications equipment providing interconnections.^[8] To safeguard the integrity of its network, PLDT regularly conducts investigations on various prepaid cards marketed and sold abroad to determine alternative calling patterns (ACP) and network fraud that are being perpetrated against it.

To prevent or stop network fraud, PLDT's ACP Detection Division (ACPDD) regularly visits foreign countries to conduct market research on various prepaid phone cards offered abroad that allow their users to make overseas calls to PLDT subscribers in the Philippines at a cheaper rate.

The ACPDD bought *The Number One* prepaid card — a card principally marketed to Filipinos residing in the United Kingdom for calls to the Philippines - to make test calls using two telephone lines: **the dialing phone** - an IDD-capable^[9] telephone line which makes the call and through which the access number *and* the PIN number printed at the back of the card are entered; and **the receiving phone** - a caller identification (*caller id*) unit-equipped telephone line which would receive the call and reflect the incoming caller's telephone number.

During a test call placed at the PLDT-ACPDD office, the receiving phone reflected a PLDT telephone number (2-8243285) as the calling number used, **as if** the call was originating from a local telephone in Metro Manila. Upon verification with the PLDT's Integrated Customer Management (billing) System, the ACPDD learned that the subscriber of the reflected telephone number is Abigail R. Razon Alvarez, with address at 17 Dominic Savio St., Savio Compound, Barangay Don Bosco, Parañaque City. It further learned that several lines are installed at this address with Abigail and Vernon R. Razon (*respondents*), among others, as subscribers.^[10]

To validate its findings, the ACPDD conducted the same test calls on November 5, 2003 at the premises of the NTC in Quezon City (and in the presence of an NTC representative^[11]) using the same prepaid card (*validation test*). The receiving phone at the NTC premises reflected the telephone numbers registered in the name of Abigail as the calling number *from the United Kingdom*.^[12]

Similar test calls subsequently conducted using the prepaid cards *Unity Card* and *IDT Supercalling Card* revealed the same results. The caller-id-equipped receiving phone reflected telephone numbers^[13] that are in the names of Experto Enterprises and Experto Phils, as subscribers, with a common address at No. 38 Indonesia St., Better Living Subdivision, Barangay Don Bosco, Parañaque City. It turned out that the actual occupant of these premises is also Abigail. Subsequently, a validation test was also conducted, yielding several telephone numbers registered in the name of Experto Phils./Experto Enterprises as the calling numbers supposedly from the United Kingdom.^[14]

According to PLDT, had an ordinary and legitimate call been made, the screen of the caller-id-equipped receiving phone would not reflect a local number or any number at all. In the cards they tested, however, once the caller enters the access and pin numbers, the respondents would route the call *via* the internet to a local telephone number (in this case, a PLDT telephone number) which would connect the call to the receiving phone. Since calls through the internet never pass the toll center of the PLDT's IGF, users of these prepaid cards can place a call to any point in the Philippines (provided the local line is NDD-capable) without the call appearing as coming from abroad.^[15]

On November 6, 2003 and November 19, 2003, Mr. Lawrence Narciso of the PLDT's Quality Control Division, together with the operatives of the Philippine National Police (*PNP*), conducted an ocular inspection at 17 Dominic Savio St., Savio Compound and at No. 38 Indonesia St., Better Living Subdivision - both in Barangay Don Bosco, Paranaque City - and discovered that PLDT telephone lines were

connected to several pieces of equipment.^[16] Mr. Narciso narrated the results of the inspection, thus -

10. During [the] ocular inspection [at 17 Dominic Savio St., Savio Compound], Ms. Abigail Razon Alvarez allowed us to gain entry and check the telephone installations within their premises. First, we checked the location of the telephone protectors that are commonly installed at a concrete wall boundary inside the compound. Some of these protectors are covered with a fabricated wooden cabinet. Other protectors are installed beside the said wooden cabinet, xxx. The inside wiring installations from telephone protectors to connecting block were routed to the said adjacent room passing through the house ceiling.

11. xxx. Upon entering the so-called adjacent room, we immediately noticed that the PLDT telephone lines were connected to the equipment situated at multi-layered rack. The equipment room contains the following:

- a. 6 Quintum router;
- b. 13 Com router;
- c. 1 Cisco 800 router;
- d. 1 Nokia Modem for PLDT DSL;
- e. 1 Meridian Subscriber's Unit[;]
- f. 5 Personal Computers[;]
- g. 1 Computer Printer[; and]
- h. 1 Flat-bed Scanner[.]

12. We also noticed that these routers are connected to the Meridian's subscriber unit ("SU") that has an outdoor antenna installed on the top of the roof. Meridian's SU and outdoor antenna are service components used to connect with wireless broadband internet access service of Meridian Telekoms.

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18. During the site inspection [at No. 38 Indonesia St., Better Living Subdivision], we noticed that the protector of each telephone line/number xxx were enclosed in a fabricated wooden cabinet with safety padlock. Said wooden cabinet was situated on the concrete wall inside the compound near the garage entrance gate. The telephone inside the wiring installations from the protector to the connecting blocks were placed in a plastic electrical conduit routed to the adjacent room at the second floor.^[17]

On December 3, 2003, Police Superintendent Gilbert C. Cruz filed a consolidated application for a search warrant^[18] before Judge Francisco G. Mendiola of the RTC, for the crimes of theft and violation of PD No. 401. According to PLDT, the respondents are engaged in a form of network fraud known as International Simple Resale (*ISR*) which amounts to theft under the RPC.

ISR is a method of routing and completing international long distance calls using lines, cables, antennae and/or wave frequencies which are connected directly to the domestic exchange facilities of the country where the call is destined (terminating country); and, in the process, bypassing the IGF at the terminating country.^[19]

Judge Mendiola found probable cause for the issuance of the search warrants applied for. Accordingly, four search warrants^[20] were issued for violations of Article 308, in relation to Article 309, of the RPC (*SW A-1 and SW A-2*) and of PD No. 401, as amended (*SW B-1 and SW B-2*) for the ISR activities being conducted at 17 Dominic Savio St., Savio Compound and at No. 38 Indonesia St., Better Living Subdivision, both in Barangay Don Bosco, Paranaque City. The four search warrants enumerated the objects to be searched and seized as follows:

1. MERIDIAN SUBSCRIBERS UNIT AND PLDT DSL LINES and/or CABLES AND ANTENNAS and/or similar equipment or device capable of transmitting air waves or frequency, such as a Meridian Subscriber's Unit, Broadband DSL and telephone lines;
2. PERSONAL COMPUTERS or any similar equipment or device capable of accepting information applying the prescribed process of the information and supplying the result of this process;
3. NOKIA MODEM or any similar equipment or device that enables data terminal equipment such as computers to communicate with other data terminal equipment via a telephone line;
4. QUINTUM Equipment or any similar equipment capable of receiving digital signals from the internet and converting those signals to voice;
5. QUINTUM, 3COM AND CISCO Routers or any similar equipment capable of switching packets of data to their assigned destination or addresses;
6. LINKS DSL SWITCH or any similar equipment capable of switching data;
7. COMPUTER PRINTERS AND SCANNERS or any similar equipment or device used for copying and/or printing data and/or information;
8. SOFTWARE, DISKETTES, TAPES or any similar equipment or device used for recording or storing information; and
9. Manuals, phone cards, access codes, billing statements, receipts, contracts, checks, orders, communications and documents, lease and/or

subscription agreements or contracts, communications and documents relating to securing and using telephone lines and/or equipment[.]^[21]

On the same date, the PNP searched the premises indicated in the warrants. On December 10, 2003, a return was made with a complete inventory of the items seized.^[22] On January 14, 2004, the PLDT and the PNP filed with the Department of Justice a joint complaint-affidavit for theft and for violation of PD No. 401 against the respondents.^[23]

On February 18, 2004, the respondents filed with the RTC a motion to quash^[24] the search warrants essentially on the following grounds: *first*, the RTC had no authority to issue search warrants which were enforced in Parañaque City; *second*, the enumeration of the items to be searched and seized lacked particularity; and *third*, there was no probable cause for the crime of theft.

On March 12, 2004, PLDT opposed the respondents' motion.^[25]

In a July 6, 2004 order,^[26] the RTC denied the respondents' motion to quash. Having been rebuffed^[27] in their motion for reconsideration,^[28] the respondents filed a petition for *certiorari* with the CA."^[29]

RULING OF THE CA

On August 11, 2006, the CA rendered the assailed decision and resolution, granting the respondents' petition for *certiorari*. The CA **quashed SW A-1 and SW A-2** (for theft) on the ground that they were issued for "non-existent crimes."^[30] According to the CA, inherent in the determination of probable cause for the issuance of search warrant is the accompanying determination that an offense has been committed. Relying on this Court's decision in *Laurel v. Judge Abrogar*,^[31] the CA ruled that the respondents could not have possibly committed the crime of theft because PLDT's business of providing telecommunication services and these services themselves are not personal properties contemplated under Article 308 of the RPC.

With respect to **SW B-1 and SW B-2** (for violation of PD No. 401), the CA upheld paragraphs one to six of the enumeration of items subject of the search. The CA held that the stock phrase "or similar equipment or device" found in paragraphs one to six of the search warrants did not make it suffer from generality since each paragraph's enumeration of items was sufficiently qualified by the citation of the specific objects to be seized and by its functions which are inherently connected with the crime allegedly committed.

The CA, however, nullified the ensuing paragraphs, 7, 8 and 9, for lack of particularity and ordered the return of the items seized under these provisions. While the same stock phrase appears in paragraphs 7 and 8, the properties described therein - *i.e.*, printer and scanner, software, diskette and tapes - include even those for the respondents' personal use, making the description of the things to be seized too general in nature.

With the denial of its motion for reconsideration,^[32] PLDT went to this Court *via* this